

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN ASSEMBLY JUNE 1, 2005

AMENDED IN SENATE APRIL 27, 2005

AMENDED IN SENATE APRIL 14, 2005

AMENDED IN SENATE APRIL 7, 2005

SENATE BILL**No. 390**

Introduced by Senator Bowen

February 17, 2005

An act to add Section 11604.5 to the Probate Code, relating to probate assignments.

LEGISLATIVE COUNSEL'S DIGEST

SB 390, as amended, Bowen. Probate assignments: cash advances.

Existing law provides for the regulation of the distribution of an estate.

This bill would regulate the assignment of a beneficiary's entire or partial interest in a decedent's estate in consideration for a cash advance or any other consideration, as specified. The bill would require the agreement to be filed with the court, would require specified disclosures with regard to costs and fees, and would prohibit an assignment agreement from containing certain provisions, including, but not limited to, a binding arbitration clause. The bill would further authorize the court to modify or refuse to order that assignment under specified circumstances, and would allow for specified damages upon a willful violation of the above-described provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11604.5 is added to the Probate Code, to read:

11604.5. (a) This section applies when distribution from a decedent's estate is made to a transferee for value who acquires any interest of a beneficiary in exchange for cash or other consideration.

(b) For purposes of this section, a transferee for value is a person who satisfies both of the following criteria:

(1) He or she purchases the interest from a beneficiary for consideration pursuant to a written agreement.

(2) He or she, directly or indirectly, regularly engages in the purchase of beneficial interests in estates for consideration.

(c) This section does not apply to any of the following transferees:

(1) A transferee who is a beneficiary of the estate or a person who has a claim to distribution from the estate under another instrument or by intestate succession.

(2) A transferee who is either the registered domestic partner of the beneficiary, or is related by blood, marriage, or adoption to the beneficiary or the decedent.

(3) A transaction made in conformity with the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code) and subject to regulation by the Department of Corporations.

(4) A transferee who is engaged in the business of locating missing or unknown heirs and who acquires an interest from a beneficiary solely in exchange for providing information or services associated with locating the heir or beneficiary.

(d) A written agreement is effective only if all of the following conditions are met:

(1) The executed written agreement is filed with the court not later than 30 days following the date of its execution or, if a probate proceeding on the estate has not yet been opened, within 30 days of the opening of the probate proceeding on the estate, but in no event later than 5 days prior to the date of the hearing at which an order of distribution is to be issued by the court administration of the decedent's estate has not commenced, then within 30 days of issuance of the letters of administration or

1 *letters testamentary, but in no event later than five days prior to*
2 *the date of notice relating to the petition for final distribution.*
3 Prior to filing or serving that written agreement, the transferee for
4 value shall redact any personally identifying information about
5 the beneficiary, other than the name and address of the
6 beneficiary, and any financial information provided by the
7 beneficiary to the transferee for value on the application for cash
8 or other consideration, from the agreement.

9 (2) If the negotiation or discussion between the beneficiary
10 and the transferee for value leading to the execution of the
11 written agreement by the beneficiary was conducted in a
12 language other than English, the beneficiary shall receive the
13 written agreement in English, together with a copy of the
14 agreement translated into the language in which it was negotiated
15 or discussed. The written agreement and the translated copy, if
16 any, shall be provided to the beneficiary.

17 (3) The documents signed by, or provided to, the beneficiary
18 are printed in at least 10-point type.

19 (4) The transferee for value executes a declaration or affidavit
20 attesting that the requirements of this section have been satisfied,
21 and the declaration or affidavit is filed with the court within 30
22 days of execution of the written agreement or, ~~if a probate~~
23 ~~proceeding on the decedent's estate has not yet commenced,~~
24 ~~within 30 days of the commencement of the probate proceeding~~
25 ~~on the estate, but in no event later than 5 days prior to the date of~~
26 ~~the hearing at which an order of distribution is to be issued by the~~
27 ~~court.~~ *administration of the decedent's estate has not*
28 *commenced, then within 30 days of issuance of the letters of*
29 *administration or letters testamentary, but in no event later than*
30 *five days prior to the date of notice relating to the petition for*
31 *final distribution.*

32 (e) The written agreement shall include the following terms, in
33 addition to any other terms:

34 (1) The amount of consideration paid to the beneficiary.

35 (2) A description of the transferred interest.

36 (3) If the written agreement so provides, the amount by which
37 the transferee for value would have its distribution reduced if the
38 beneficial interest assigned is distributed prior to a specified date.

39 (4) A statement of the total of all costs or fees charged to the
40 beneficiary resulting from the transfer for value, including, but

1 not limited to, transaction or processing fees, credit report costs,
2 title search costs, due diligence fees, filing fees, bank or
3 electronic transfer costs, or any other fees or costs. If all the costs
4 and fees are paid by the transferee *for value* and are included in
5 the amount of the transferred interest, then the statement of costs
6 need not itemize any costs or fees. This subdivision shall not
7 apply to costs, fees, or damages arising out of a breach or
8 violation of the agreement, ~~fraud, or misrepresentation or fraud~~
9 by or on the part of the beneficiary.

10 (f) A written agreement shall ~~be voidable if it contains not~~
11 *contain* any of the following provisions *and, if any such*
12 *provision is included, that provision shall be null and void:*

13 (1) A provision holding harmless the transferee for value.

14 (2) A provision requiring binding arbitration.

15 (3) A provision granting to the transferee for value agency
16 powers to represent the beneficiary's interest in the decedent's
17 estate beyond the interest transferred.

18 (4) A provision requiring payment by the beneficiary to the
19 transferee for value ~~of any amount exceeding the amount of the~~
20 ~~transferred interest as compensation~~ for services not related to the
21 written agreement or services other than the transfer of interest
22 under the written agreement.

23 (5) A provision permitting the transferee for value to have
24 recourse against the beneficiary if the distribution from the estate
25 in satisfaction of the beneficial interest is less than the beneficial
26 interest assigned to the transferee for value other than any
27 expense, damage, or liability arising out of the breach or
28 violation of the agreement, ~~fraud, or misrepresentation or fraud~~
29 by or on the part of the beneficiary.

30 (g) The court on its own motion, or on the motion of the
31 personal representative or other interested person, may inquire
32 into the circumstances surrounding the execution of, and the
33 consideration for, the written agreement to determine that the
34 requirements of this section have been satisfied.

35 (h) The court may refuse to order distribution under the
36 written agreement, or may order distribution on any terms that
37 the court considers equitable, if the court finds that the transferee
38 for value did not substantially comply with the requirements of
39 this section, or if the court finds that any of the following
40 conditions existed at the time of transfer:

1 (1) The fees, charges, or consideration paid or agreed to be
2 paid by the beneficiary were grossly unreasonable.

3 (2) The transfer of the beneficial interest was obtained by
4 duress, fraud, or undue influence.

5 (i) In addition to any remedy specified in this section, for any
6 willful violation of the requirements of this section found to be
7 committed in bad faith, the court may require the transferee for
8 value to pay to the beneficiary up to twice the value paid for the
9 assignment.

10 (j) Notice of the hearing on any motion brought under this
11 section shall be served on the beneficiary and on the transferee
12 for value at least 15 days before the hearing in the manner
13 provided in Section 415.10 or 415.30 of the Code of Civil
14 Procedure.

15 (k) If the decedent's estate is not subject to a pending court
16 proceeding under the Probate Code in California, the transferee
17 for value shall not be required to submit to the court a copy of the
18 written agreement as required under paragraph (1) of subdivision
19 (d). If the written agreement is entered into in California or if the
20 beneficiary is domiciled in California, that written agreement
21 shall otherwise conform to the provisions of subdivisions (d), (e),
22 and (f) in order to be effective.